

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| GREGORY GREENE, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | No. 98-5393 |
| | : | |
| TURF CLUB SERVICES, INC., | : | |
| Defendant. | : | |

MEMORANDUM

Green, S.J.

January , 2000

Presently before the court is the Motion For Summary Judgment of Defendant, Turf Club Services, Inc., and Plaintiff's response thereto. For the reasons set forth below, Defendant' motion will be DENIED.

I. Facts and Procedural History

Plaintiff, Gregory Greene, was employed by Defendant, Turf Club Services, Inc., as a short order cook from July 30, 1997 to September 22, 1997. Plaintiff alleges that during his employment he was discriminated against and harassed because he is an African-American. Plaintiff claims that his direct supervisor, Tom Connors ("Connors"), made a number of discriminatory comments that exhibited racial animus towards him. Plaintiff further alleges that Connors terminated Plaintiff because of Connors's bias against African-Americans.

On October 9, 1998, Plaintiff filed the instant suit alleging employment discrimination based on color and race. Plaintiff's complaint contains three counts, alleging violations of: 1) the Civil Rights Act of 1866, 42 U.S.C. § 1981; 2) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e) et seq.; and 3) the Pennsylvania State Human Relations Act, 43 Pa.C.S.A. §§ 955 et seq. Defendant denied Plaintiff's

allegations of discrimination in Defendant's Answer to Plaintiff's complaint on November 17, 1998.¹ Defendant filed the instant motion for summary judgment on October 1, 1999 and Plaintiff filed a memorandum of law in opposition to Defendant's motion on November 1, 1999.

II. Summary Judgment Standard

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the nonmoving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

III. Discussion

"In the Third Circuit, the elements of employment discrimination under Title VII

¹ In Defendant's Answer, Defendant raises the affirmative defense of failure to exhaust remedies available to Plaintiff under the collective bargaining agreement between the Turf Club and Local 274, Hotel Employees and Restaurant Employees Union of Eastern Pennsylvania and Delaware, AFL-CIO. Article 7 of the collective bargaining agreement states that Probationary employees (those employed for 60 days or less) may be terminated with or without good cause at the sole discretion of the Employer, Turf Club. It is undisputed that Plaintiff was only employed by Defendant for 54 days. He was, therefore, a Probationary employee under the collective bargaining agreement. Furthermore, the collective bargaining agreement, on its face, does not provide any remedies to Probationary employees. As a consequence, there is no genuine issue of material fact as to whether Plaintiff exhausted remedies under the agreement. It follows that Defendant's affirmative defense does not entitle it to summary judgment.

are identical to the elements of a section 1981 claim.” Schurr v. Resorts International Hotel, Inc., 196 F.3d 486, 499 (3d Cir. 1999)(citation omitted). Additionally, Pennsylvania Human Relations Act (“PHRA”) cases are considered under the same analysis as cases under Title VII. See Allegheny Housing Rehabilitation Corp. v. Human Relations Comm’n, 532 A.2d 315, 318-19 (Pa. 1987). Accordingly, the following Title VII analysis is applicable to all three counts of Plaintiff’s complaint.

A. Hostile Work Environment

To establish a claim for employment discrimination due to an intimidating or offensive work environment, a plaintiff must establish, “by the totality of the circumstances, the existence of a hostile or abusive environment which is severe enough to affect the psychological stability of a minority employee”. Aman v. Cort Furniture Rental Corp, 85 F.3d 1074, 1081 (3d Cir. 1996)(citation omitted). Specifically, a plaintiff must demonstrate that: (1) he suffered intentional discrimination because of race; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) the existence of respondeat superior liability. See Id.

Defendant argues in its Motion for Summary Judgment that Plaintiff has failed to establish the second element of the hostile work environment framework, i.e., Defendant asserts that Plaintiff has not demonstrated that the alleged harassment was pervasive and regular. Considered in a light most favorable to the Plaintiff, he has produced sufficient evidence so that a reasonable jury could conclude that the working environment at Turf Club Services, Inc., was pervaded by discriminatory “intimidation,

ridicule, and insult.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). Plaintiff’s evidence demonstrates that during the approximately fifty-four (54) days that he was employed at Turf Club Services, Inc., Connors, his immediate supervisor, made racist remarks. According to Plaintiff’s evidence, Connors referred to African-Americans as slow and lazy, said “black people don’t listen”, and said “black people use crack”. Plaintiff has also presented evidence that African-Americans were subjected to false accusations of incompetence and were made to do menial jobs. In light of the foregoing evidence, a reasonable jury could believe that if the Plaintiff had been white, he would not have been treated in the same manner. Aman, 85 F.3d at 1083. Accordingly, a reasonable jury could conclude that Plaintiff was the subject of unlawful discrimination on a regular and pervasive basis. I conclude, therefore, that a genuine issue of material fact exists as to Plaintiff’s claim for hostile environment. As such, Defendant’s Motion for Summary Judgment will be denied.

B. Discriminatory Termination

To make out a prima facie case of discriminatory termination, the plaintiff must establish that: (1) he is a member of a protected class; (2) he was qualified for the position from which he was discharged; (3) he was discharged from the position; and (4) he was fired under circumstances creating an inference of racial discrimination. Pivrotto v. Innovative Systems, Inc., 191 F.3d 344, 350-355 (3d Cir. 1999). If the plaintiff succeeds, the burden of production shifts to the defendant to articulate some legitimate non-discriminatory reason for the employee’s termination. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). Once the defendant has met this burden, the burden of production rebounds to the plaintiff to show by a preponderance of the evidence that

the employer's explanation is pretextual and that discrimination was the real reason for the plaintiff's termination. Id. To defeat summary judgment when defendant answers plaintiff's prima facie case with legitimate, non-discriminatory reasons for its action, the plaintiff must point to some evidence from which the factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinate cause of the employer's action." Id. at 764.

In the instant matter, Plaintiff has met the relatively light burden of demonstrating a prima facie case. Plaintiff is an African-American, he has working experience as a short-order cook, he was discharged by the Defendant, and the comments allegedly made by Connors may create an inference that he was fired because of his race. In response, Defendant articulated a legitimate, non-discriminatory reason for Plaintiff's termination. Defendant avers that Plaintiff did not have the essential skills required for a cook and that he was terminated because he burned food orders. Plaintiff, however, contends that Defendant's proffered reason is pretextual because he was not disciplined for burning food orders while a waitress was suspended for several days for the same incident. Plaintiff also points to the racially discriminatory comments allegedly made by Connors as evidence that Plaintiff's termination was motivated by racial discrimination. The evidence highlighted by the Plaintiff is sufficient to defeat summary judgment because the Plaintiff has proffered sufficient evidence from which a reasonable jury could conclude that Defendant's articulated legitimate reason is pretextual and that racial discrimination was a motivating factor in terminating the Plaintiff. Thus, Defendant's Motion for Summary Judgment will be denied.

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| TURF CLUB SERVICES, INC., | : | |
| Defendant. | : | |

ORDER

AND NOW, this day of January, 2000, upon consideration of the Motion For Summary Judgment of Defendant, Turf Club Services, Inc., and Plaintiff's response thereto, **IT IS HEREBY ORDERED** that Defendant' motion is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.